IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.34 OF 2005

Ashok Laxman Mhamne ...Applicant.

v/s

Mrs. Usha Ashok Mhamane ...Respondent.

Mr. S.S. Patwardhan for the applicant.

Ms. Vijayalaxmi Nikam, advocate appointed by the
Legal Aid Committee for the respondent.

CORAM: V.M.KANADE,J.
DATE: 28th October, 2005

P.C.

1. Heard the learned counsel appearing for the applicant and the learned counsel appearing on behalf of the respondent.

2. Applicant is challenging the order passed by the Civil Judge, Junior Division, Akkalkot whereby the trial court held that the Civil Court has jurisdiction to entertain the suit which was filed by the respondent/wife.

3. Brief facts are as under:-

4. Respondent/wife filed a suit in the court of Civil Judge, Junior Division, Akkalkot under section 18 of the Hindu Adoptions and Maintenance Act 1956 and

claimed maintenance @ Rs 4,000/- per month. In this suit, the applicant/husband raised an objection regarding jurisdiction of the civil court to try and decide the said suit. The trial court, however, by order dated 29/11/2004 held that the civil court has jurisdiction to try and decide the said suit. Against the said order, present C.R.A. has been filed by the applicant.

5. The learned Counsel appearing on behalf of the applicant submitted that since section 19 of the Hindu Marriage Act, 1955 is not made applicable to the provisions of Hindu Adoptions and Maintenance Act 1956, the respondent/wife cannot file a suit at the place where she resides. He submitted that, therefore, the trial court does not have territorial jurisdiction to hear and decide the said suit.

6. I am unable to accept the submissions made by the learned counsel appearing on behalf of the applicant/husband. The respondent/wife, in the plaint, has alleged that the marriage had taken place at Akkalkot and that the wife had to stay with her parents at Akkalkot on account of the fact that the applicant/husband had treated her with physical and mental cruelty.

7. In view of the specific averments which are made in the plaint, the question is : whether the part of the cause of action has arisen at Akkalkot or not?. In my view, this question is a mixed question of fact and law and before deciding this issue the trial court ought to have given an opportunity to both parties to lead evidence. The trial court, however, had decided the said issue as a preliminary issue without permitting the parties to lead evidence.

8. In the result, the impugned order is set aside. The trial court is directed to frame all the issues and decide all the issues together, after both parties have led oral and documentary evidence. If an application for interim maintenance is filed by the respondent/wife, this application should be decided as expeditiously as possible and, in any case, within a period of two months. With these directions, the Civil Revision Application is partly allowed and is disposed of accordingly. Hearing of the suit is expedited.

V.M. KANADE, J.